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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,240	10/14/2003	Leroy Braun	M33.12-0024	5742

164 7590 09/29/2005

KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS, MN 55415-1002

EXAMINER	
CHAPMAN JR, JOHN E	

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/685,240	BRAUN ET AL.
	Examiner	Art Unit
	John E. Chapman	2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The terminal disclaimer filed on August 9, 2005 is not accepted. The application being disclaimed has been improperly identified since the number used to identify the application being disclaimed is incorrect. The correct number is 11/053,408. The terminal disclaimer has not been recorded.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07-308310 (the '310 publication) in view of Slavin (4,489,610).

The '310 publication discloses audio circuitry 4 for delivering test tones to speakers 9, 10; a computer 3 for monitoring a subject's responses to the tones, detecting when an error has occurred in the test subject's input and selecting a message to display on display 26; and an interface SI3 operatively connected to the computer for signaling whether a test subject perceives the audible test tones. A switch 6 has a first state in which audible test tones generated by the audio circuitry 4 are provided to the speakers 9, 10. The '310 publication does not indicate whether the speakers 9, 10 are earphones. However, the intended use of delivering audible test tones to earphones worn by a test subject is not given any weight, since earphones are not positively recited in the claims and, furthermore, the audio circuitry 4 is inherently capable of delivering test signal to earphones. Moreover, it is well known in the art to use earphones when performing an audiometric test, as taught by headset 20 of Slavin and earphones 50 in Fig. 1 of

the admitted prior art, and it would have been obvious to use earphones for speakers 9, 10 of the '310 publication in order to prevent a good ear from hearing examination sounds given to an ear with poor hearing (see paragraph 3). Accordingly, the primary difference between the claimed invention and the prior art consists in providing a second state in which instructions represented by sound waves are provided to the speakers 9, 10 when errors are detected in the test subject's responses and automatically switching back to the first state following delivery of the instructions so that testing is resumed.

The '310 publication teaches detecting when an error has occurred in the test subject's input, for example, the subject keeps pressing the response button 24A when there is no examination sound, and prompting the subject to release the response button (see paragraph 62). The '310 publication further teaches automatically resuming testing if the subject releases the response button (see paragraph 63). The prompt comprises an examination sound that it 10 dB greater than the previous examination level. Accordingly, the primary difference between the claimed invention and the prior art consists in providing audible instructions, rather than a prompt, to the test subject in order to prompt the test subject to release the response button. The '310 publication further teaches directly instructing the test subject to release the response button 24A by displaying a message on display 26 (see paragraph 84), and alternatively teaches using voice as a means of notification that the subject is continuing to press the response button (see paragraph 85). Accordingly, it would have been obvious to use vocal instructions, in lieu of visual instructions, in order to directly instruct the test subject to release the response button 24A and then to automatically continue testing if the subject releases the response button.

It is not clear that the vocal instructions suggested by the '310 publication (paragraph 85) are produced by the computer. Slavin discloses an audible instruction generator 16 under the control of a central processing unit 12 for providing audible instructions to a user for the conduct of an audiometric test (see column 2, lines 35-43). It would have been obvious in view of Slavin to provide an audible instruction generator under the control of the computer 3 of the '310 publication for the purpose of providing audible notification to the test subject as to the error, i.e., that the subject is continuing to press the response button. The advantage of providing audible notification in addition to, or in lieu of, visual notification would have been evident to a person of ordinary skill in the art.

Regarding microprocessor circuitry operatively coupled to the computer, no function is specifically assigned to the microprocessor circuitry in the claim. Since it is not clear that the microprocessor circuitry recited in the claim performs any function, the microprocessor circuitry may be operatively coupled to the CPU 3 for any reason. It would have been obvious to operatively connect a video card to the CPU 3 in order to drive the display 26, which video card typically comprises microprocessor circuitry including a memory. In addition, the '310 publication teaches storing the results of the audiometric test in a storage memory but does not illustrate a storage memory (see paragraph 26). It is well known in the art to store data in the memory of a microprocessor circuitry, and merely to store the audiometric test results of the '310 publication in the memory of a microprocessor circuitry would have been obvious to one having ordinary skill in the art.

Regarding claim 7, the '310 publication teaches storing the results of the audiometric test in a storage memory (see paragraph 26). Note also column 2, lines 61-67, of Slavin.

Regarding claim 8, the computer operates according to a pre-programmed logical testing procedure.

Regarding claim 9, the '310 publication teaches the use of a standard pure sound examination method (see paragraph 22). It is not clear whether the disclosed method comprises the Hughson-Westlake procedure. Nevertheless, the Hughson-Westlake procedure is a standard pure sound examination method and, if the disclosed method is not the Hughson-Westlake procedure, it would have been obvious to one of ordinary skill in the art to substitute one pure sound examination method for another.

Regarding claim 11, it would have been obvious to operatively connect a host computer comprising a microprocessor to the CPU 3 in order to control a number of similar CPU's and thereby simultaneously test a plurality of test subjects.

Regarding claim 14, the results of the audiometric test are stored in a storage memory for later retrieval (see paragraph 26). The only difference, if any, between the claimed invention and the prior art consists in displaying the results on the display 26. If the '310 publication does not teach displaying the test results on the display 26, it would have been obvious to one of ordinary skill in the art to retrieve the test results stored in the computer 3 and display it on the display 26 attached to the computer.

Regarding claim 15, it is well known in the art to use a relay to provide switching in an audiometer, as taught by relay 64a in Fig. 3 and relay 64b in Fig. 2 of the admitted prior art, and merely to use a relay to control the switch 6 of the '310 publication would have been obvious to one of ordinary skill in the art.

4. Claims 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07-308310 in view of Slavin as applied to claims 6-15 above, and further in view of RION AA-75 Audiometer Operation Manual (RION).

RION teaches displaying an error message (paragraph 3 on page 131) and continuing with the audiometric examination (paragraph 5 on page 131). Accordingly, it would have been obvious in view of RION to automatically resume testing after directly instruct the test subject to release the response button 24A in the '310 publication.

5. Claims 12-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 21 of U.S. Patent No. 6,644,120. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to provide a computer to effect the method for performing a diagnostic test protocol of claim 21 of '482.

6. Claims 12-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,416,482. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to provide a computer to effect the method for automatedly administering an audiometric test of claim 2 of '482.

7. Claims 12-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 5,811,681. Although the

conflicting claims are not identical, they are not patentably distinct from each other because a computer is recited in the method for administering an audiometric test of claim 3 of '681.

8. Claims 7 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 and 11 of copending Application No. 11/053,480. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 7 and 13 are directed to an obvious means for performing the claimed method.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Applicant's arguments filed August 9, 2005 have been considered but are moot in view of the new ground(s) of rejection.

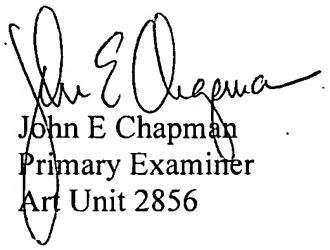
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John E. Chapman whose telephone number is (571) 272-2191. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John E Chapman
Primary Examiner
Art Unit 2856